

**United States Court of Appeals  
FOR THE EIGHTH CIRCUIT**

\_\_\_\_\_  
No. 11-1977  
\_\_\_\_\_

**David Stebbins**  
**Appellant**

**v.**

**Randal Richardson and**  
**Reliable Heat & Air, LLC**  
**Appellees**

)  
)  
)  
)  
)  
)  
)  
)  
)  
)

**On Appeal from the United States  
District Court for the Western  
District of Missouri**

PETITION FOR EN BANC HEARING

Comes now Appellant David Stebbins, who hereby submits the following petition for the United States Court of Appeals for the Eighth Circuit en banc to review the decision of the three-judge panel in this case.

1. Per FRAP Rule 5(b)(1)(A), I hereby submit the following facts necessary to understand the questions:
  - A) On April 27, 2011, I filed a notice of appeal with the United States District Court for the Western District of Arkansas, announcing my intention to appeal the District Court order denying confirmation of an arbitration award in Case No. 10-3305.
  - B) The District Court denied my motion for leave to appeal in forma pauperis.
  - C) On May 4, 2011, The United States Court of Appeals for the Eighth Circuit ordered me to file a renewed motion for leave to proceed in forma pauperis within thirty days of that day, otherwise I would have to show cause why my case should not be dismissed, clearly implying that they are accepting jurisdiction for the case.

D) On June 1, 2011, the three judge panel unanimously dismissed my case for lack of jurisdiction. No explanation, whatsoever, was given for the dismissal.

2. Per FRAP Rule 5(b)(1)(B), I hereby submit the following questions:

A) Does the United States Court of Appeals for the Eighth Circuit have jurisdiction in this case?

B) Should the panel of three judges have dismissed the case for lack of jurisdiction, without even reaching the merits of the case?

3. Per FRAP Rule 5(b)(1)(C), I request that the three-judge panel's dismissal be reversed and remanded with instructions for the appeal to be heard on its merits.

4. In compliance with FRAP Rule 5(b)(1)(D), I hereby submit the following statement for why the court should grant me permission to file this appeal.

A) The dismissal is not likely made in good faith. It is probably more because the issue I am appealing is uncomfortable, rather than anything to do with an actual lack of jurisdiction. This is evidenced by a variety of circumstantial evidences.

i. No explanation whatsoever was given for the conclusion that the court lacked jurisdiction, even after my request for details. Why would they refuse to provide any details? Is it because they just don't feel like it? Not likely; I think a much more likely explanation is that there are no details that can be provided.

ii. On May 4, 2011, I was told that I should file a renewed motion for leave to appeal in forma pauperis within thirty days, otherwise I must show cause for why my case should not be dismissed. However, the Pacer Files do not show a document associated with that order; it has an entry called "Updated Fee Status," on that date, which sounds like the most likely candidate for where that order should

appear, but no document is attached to it. This makes me wonder if that is supposed to happen, or if someone took down the Updated Fee Status.

- B) Not only is the appeal likely not taken in good faith, but it outright conflicts with binding precedent. In the case of *Cicle v. Chase Bank USA*, 583 F.3d 549, 553 (8th Cir. 2009), the appellants were appealing a District Court order denying a motion to compel arbitration and stay the proceedings. This appeal was also taken in accordance with 9 U.S.C. § 16(a) (§ 16(a)(1)(A)-(B) to be exact), but the court still accepted jurisdiction to hear the appeal, despite there being no significant procedural differences in that case and this one.
- C) Furthermore, I am not asking you to reverse the District Court's decision... yet. I am asking you to require the three judge panel to hear the appeal on its merits. If my case is without merit, then the three judge panel should have nothing to fear regarding hearing the appeal on its merits.
- D) The United States has a strong federal policy favoring arbitration. Therefore, the court should take any opportunity it can to review an arbitration-related issue on the merits.

Wherefore, I respectfully pray that you reverse the decision of the three-judge panel in this case and remand back to the three-judge panel with instructions to hear the appeal on its merits.

It is so requested, on this 8<sup>th</sup> day of June, 2011.

\_\_\_\_\_  
/s/ David Stebbin  
David Stebbins  
1407 N Spring Rd,  
APT #5  
Harrison, AR 72601  
870-204-6024

[stebbinsd@yahoo.com](mailto:stebbinsd@yahoo.com)

**United States Court of Appeals  
FOR THE EIGHTH CIRCUIT**

\_\_\_\_\_  
No. 11-1977  
\_\_\_\_\_

**David Stebbins**  
**Appellant**

**v.**

**Randal Richardson and**  
**Reliable Heat & Air, LLC**  
**Appellees**

)  
)  
)  
)  
)  
)  
)  
)  
)  
)

**On Appeal from the United States  
District Court for the Western  
District of Missouri**

CERTIFICATE OF SERVICE

I, Appellant David Stebbins, hereby certify that a true and correct copy of my petition for an en banc hearing was served on Gary Allman, Attorney for the Defense, by allowing him to view the Notice of Docket Activity on ECF.

\_\_\_\_\_  
/s/ David Stebbin  
David Stebbins  
1407 N Spring Rd,  
APT #5  
Harrison, AR 72601  
870-204-6024  
[stebbinsd@yahoo.com](mailto:stebbinsd@yahoo.com)